No. 66 and 67.

Rec Supreme Court U.S.
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JAMES H. McKENNEY,
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Supreme Court of the United States.

CANTON INSURANCE COMPANY, LIMITED, and others AGAINST JOHN McINTYRE, JR., and others.	No 66.
JOHN McINTYRE, JR., and others AGAINST CANTON INSURANCE COMPANY, LIMITED, and others.	No. 67.

Memorandum on Behalf of Canton Insurance Company and Others.

The owners of the *Victory* were permitted by the District Court to deduct from the appraised value of their vessel the costs incurred by them incident to establishing their right to limitation of liability (*Decree, p. 464*). The propriety of such allowance has never been questioned.

The owners of the *Plymothian*, being entirely successful in the District Court, were awarded costs, not only those purely incident to limitation of liability, but also those incident to establishing their freedom from fault. The total amount was $1,681.80, one-half of which was charged against the underwriters of cargo and one-half of which was charged against the owners of the *Victory* (*Decree, p. 465*). In respect of the one-half charged against the owners of the *Victory* the District Court submitted to the Appellate Court the question whether

such item should be paid out of the appraised value of the *Victory* or out of the pockets of her owners *(Deevee, p. 465)*.

The appraised value of the *Victory* had nothing whatever to do with the costs then under consideration. The appraised value was in an action which had been instituted by the owners of the *Victory* for limitation of their liability. The costs, on the other hand, were incurred in the independent action instituted by the owners of the *Plymothian* for limitation of their liability, and were incurred by the *Victory* in unsuccessfully contesting such action.

The owners of the cargo were compelled to pay out of their pockets one-half of the *Plymothian's* costs, and the owners of the *Victory* should pay out of their pockets the other half. If the owners of the *Victory* had not voluntarily appeared and contested the petition of the owners of the *Plymothian* for limitation of liability, they would not have been subjected to costs. Having thus appeared and contested, they should pay the costs.

WILHELMUS MYNDERSE,
Advocate for Canton Insurance Company.